

MEMO ENDORSED**DICELLO LEVITT**

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January 5, 2023

VIA ECF

Hon. Valerie E. Caproni
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 240
New York, NY 10007

RE: *Terrell v. Revlon Consumer Products Corp. et al*¹, No. 1:22-cv-09008
Joint Letter in advance of the Initial Pre-Trial Conference (IPTC) and
Request to adjourn the IPTC until after the JPML decision

Dear Judge Caproni:

Plaintiff Rhonda Terrell brings this lawsuit against Defendants L'Oréal USA, Inc, L'Oréal USA Products, Inc. ("L'Oréal USA"), and Strength of Nature, LLC ("Strength of Nature"), the makers of the chemical straighteners and hair relaxers that Plaintiff alleges caused her uterine cancer. Plaintiff alleges that Defendants knew, or should have known, that their products increased the risk of cancer but manufactured and distributed them anyway, while giving no warning to consumers that they carried such risks.

Plaintiff contends that the legal and factual issues are whether: (1) Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to use the Products; (2) Defendants breached their duty by failing to use reasonable care in the design and/or manufacturing of their Products; (3) Defendants breached their duty of care by failing to use reasonable care in providing adequate warnings on their Products; (4) Defendants breached their duty in representing that the Products have no serious side effects; (5) Defendants breached their express and implied warranties of the Products sold to Plaintiff; and (6) Defendants

¹ Revlon Consumer Products Corp has been dismissed from this action. SoftSheen-Carson, Inc. is not an existing entity. The parties are meeting and conferring regarding the dismissal of SoftSheen-Carson, Inc. from this action and/or the substitution of the correct party, counsel of which is anticipated to be the same as for L'Oréal USA

negligently breached said duties and unreasonably and negligently allowed the Products to be used by Plaintiff without proper recall or retrofit or warning. Defendants reserve all rights to challenge the adequacy of Plaintiff's allegations and do not concede that any of the foregoing are cognizable legal or factual issues properly alleged in the operative pleading.

This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000 and Plaintiff and Defendants are residents of different states.

There are currently no pending motions before this Court. However, Plaintiff has joined other movants in the Judicial Panel for Multidistrict Litigation ("JPML") seeking consolidation. Defendants to this lawsuit have filed opposition to consolidation. Oral argument is set for January 26, 2023.

The parties have met and conferred and have completed this Court's form discovery plan, however the Parties were unable to agree on hard deadlines without knowing whether this case is going to be consolidated by the JPML. Further, if this case is not consolidated, Defendants might seek to coordinate discovery with other similar matters. Thus, the Parties believe that a Rule 16 conference after the JPML has made a decision on consolidation would be more efficient.

At this time, the Parties have not yet discussed settlement opportunities.

The Parties joint request for adjournment of the IPTC

The parties also request at this time for an adjournment of the IPTC set for January 13, 2023. The reason for this request is to allow for the JPML to decide on consolidation. The outcome of that decision will impact the schedule and progression of this case. This is the Parties' first request for adjournment. The Parties have met and conferred regarding the proposal of a new date and submit for this Court's approval March 13, 2023 as a new date for the IPTC.

Application GRANTED in part. The Initial Pretrial Conference, originally scheduled for January 13, 2023, is hereby ADJOURNED *sine die*. All deadlines in this case are STAYED pending a decision by the JPML. The parties are directed to file a joint status update by no later than **March 15, 2023**.

SO ORDERED.



Date: 1/6/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

/s/ Adam J. Levitt

Adam J. Levitt

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